IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 401 OF 2001
WITH
CRIMINAL APPEAL NOS.384, 385, 417 & 305 OF 2001.

CRIMINAL APPEAL NO. 401 OF 2001

Arun Narayan Dhumal ....
Appellant.

(Orig.Accd. No.1)

V/s

The State of Maharashtra..... . ....
Respondent.

CRIMINAL APPEAL NO. 305 OF 2001

Hiraman Janu Zuge ....Appellant.

(Orig.Accd.No.3)

V/s

The State of Maharashtra ....
Respondents.

CRIMINAL APPEAL NO. 384 OF 2001

1)Parashuram Ladaku Patil
2)Suresh Eknath Dhumal
3)Nandkishor Natha Patil.... .....Appellants

(Orig.Accd.Nos.19, 22 & 23)

V/s

The State of Maharashtra ....
Respondent

CRIMINAL APPEAL NO. 385 OF 2001

1)Dharma Dhaya Joshi
2)Madan Vasant Dhumal
3)Machindra Narayan Dhumal
4)Pralhad Sitaram Zuge
5)Pandurang Damu Pawar

6)Shyam Eknath Dhumal
7)Madan Dauram Pawar
8)Jagdish Narayan Dhumal
9)Hausha Atmaram Pawar
10)Vishwanath Bana Patil..... ..... Appellants
(Orig.Accd.Nos.4 to 6, 9 to 12 & 15 to 17)

V/s

The State of Maharashtra .... Respondent.

CRIMINAL APPEAL NO. 417 OF 2001

Ananta Joma Patil.... .... Appellant
(Orig.Accd No.2)

V/s

The State of Maharashtra .... Respondent

Mr.A.P.Mundargi, Sr.Adv. with Mr.Ganesh Gole for the appellant

Smt.P.H.Kantharia, APP for respondent.

Mr.S.R.Chitnis, Sr.Adv. with Smt.V.R.Raje for accused No.4

Mr.Shirish Gupte, Sr.Adv. with Smt.Sunita Gaidhani for accused Nos.3 & 16.

Mr.B.R.Patil for accused No.2.

CORAM: V.G. PALSHIKAR, Ag.C.J.

AND

SMT.NISHITA MHATRE, J.

16th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, Ag. C.J.)

The village Koper in Panvel Taluka of Raigad District is one of the many villages which has its small lake or pond in which fish grows

naturally as also artificially with the aid of pisciculture. It is the decision of the entire village that the rights to fish in this pond should be annually auctioned.

2. Accordingly said auction was held on 4.6.1995 and the highest bid of one Shri Ram Laxman Patil was accepted. By 7.6.1995 this Patil, the auction purchaser, noticed that the fish in the pond were dying at fast rate probably unnaturally. He therefore claimed to the village Committee (Gavki) that his money i.e. Rs.65,000/- be returned to him.

3. The village meeting of the entire village was called on 11.6.1995 in the Ganesh Temple Hall and one Shri Kamlakant Thakur of Indian Congress Party was invited to settle the dispute arising out of this auction purchased.

4. The meeting accordingly was attended by almost every villager of village Koper and it was peacefully and unanimously decided to return the sum of Rs.65,000/- to the auction purchaser Shri Patil. However after this decision was taken as is usual in the entire Raigad district acrimony started between the age old political groups one belonging to the Congress and other belonging to Peasants and Workers Party. The oral acrimony gave rise to physical assault which took place according to some individuals in the hall and according to some it was carried out of the hall and the assault ultimately resulted in death of one Dharma Vithal Patil, some others being injured. First Information Report of the incident was lodged, police arrived on the

scene of offence, arrested some and investigated the complaint. On completion of the investigation the police filed charge sheet on 11.7.2002 against 18 accused persons who were named in the FIR report recorded as such. It charged the accused under sections 147, 148, 302 read with section 149, 307 read with section 149, 337 read with section 149, 427 read with section 149 of Indian Penal Code as also section 25(1)(a)(c) of the Arms Act.

5. The recording of evidence had not commenced even after charge was filed on 11.7.2002 and therefore additional charge was framed by the learned trial Judge on 7.11.2002 against those very 18 accused persons charging them additionally under section 324 read with section 149 of Indian Penal Code. On that very day an application Exh.103(c) was filed by the prosecution claiming framing of charges against persons named in that application which was done by the learned trial Judge by adding accused Nos.19 to 23 and charging them under all those sections as aforesaid. Thereafter also the learned trial Judge did not start recording of evidence for the prosecution. That started on 14.11.2000 when P.W.1-Dinkar Kana Zuge who is the complainant and has filed the FIR was examined for the prosecution as P.W.1.

6. When the recording of evidence was in progress Exh.202(c) was filed requesting framing of charge against 12 more persons. This was also accepted and additional charge was framed on that day i.e. on

2.2.2001against accused Nos.24 to 36. They were also charged of having committed all the offences as mentioned against the accused Nos. 1 to 23 earlier. It will thus be seen that the additional charges were framed on two occasions and three times. The first occasion arose on 7.11.2002 when one charge was added to the 18 accused already charge sheeted and five more accused were charge sheeted. The learned trial Judge completed recording of evidence. In all 12 witnesses were examined for prosecuting 36 accused persons and the learned trial Judge by his impugned order convicted several of the accused persons of various offences and sentenced them to different sentences as will be seen from the following chart:

CHART

Accd No.	*Name*	*Convicted u/s.*	*Sentence*
7	Tulshiram Janu Zuge	Are acquitted of the offence punishable u/ss.147, 148, 302 r/w 149, 307, r/w 149, 337 r/w 149 & 427 r/w 149, 324 r/w 149 of IPC and u/ss.25(1)(a) and (c) of the Indian Arms Act. Their Bail bonds stands cancelled.	
8	Shivdas Damu Pawar		
13	Jana Kalu Zuge		
14	Satyawan Rama Patil		
20	Sanjay Shankar Patil		
21	Narayan Nago Dhumal		
24	Dnyaneshwar Jatraya		
25	Pawar		
26	Dildar Changa Patil		
27	Ashok Ananta Naik		
28	Vasant Daluram Pawar		
29	Nakul Govind Patil		
30	Gajanan Shrawan Patil		
31	Bhalchandra Maruti		
32	Mhatre		
33	Madhukar Nagu Dhumal		
34	Bharat Devji Patil		
35	Shekhar Vasant Dhumal		
36	Suresh Devji Patil		
	Maruti Janardan Dhumal		
	Gurunath Natha Patil		

1 2 3 4 5 6 9 10 11 12	Arun Narayan Dhumal Ananta Joma Patil Hiraman Janu Zuge Dharma Dhaya Joshi Madan Vasant Dhumal Macchindra Narayan Dhumal Pralhad Sitaram Zuge Pandurang Damu Pawar Sham Eknath Dhumal Madan Daluram Pawar	Are acquitted of offence punishable u/ss. 337 r/w.149, 427 r/w 149 of IPC as also u/ss.25(1)(c) of the Indian Arms Act.	
15 16 17 19 22 23	Jagadish Narayan Dhumal Hausha Atmaram Pawar Vishvanath Bana Patil Parshuram Ladaku Patil Suresh Eknath Dhumal Nandkishor Natha Patil	**Except** Accused No.1 all other accused i.e. 2 to 6, 9 to 12, 15 to 17, 19, 22 & 23 are also acquitted for the offence punishable u/s.25 (1)(a) of the Indian Arms Act.	
1 2 3 4 5 6 9 10 11 12	Arun Narayan Dhumal Ananta Joma Patil Hiraman Janu Zuge Dharma Dhaya Joshi Madan Vasant Dhumal Macchindra Narayan Dhumal Pralhad Sitaram Zuge Pandurang Damu Pawar Sham Eknath Dhumal Madan Daluram Pawar	1)Are convicted for the offence punishable u/s.302 r/w 149 of IPC. 2)Also convicted u/s.307 r/w.149 of IPC. **3**)Also convicted u/s.324 r/w sec.149 of IPC.	Life Imprisonment and to pay fine of Rs.100/ each i.d. R.I. For one month. Sentenced to suffer R.I. For 10 years and fine of Rs.100 each i.d. R.I. For one month. R.I. For one year.

15 16 17 19 22 23	Jagdish Narayan Dhumal Hausha Atmaram Pawar Vishwanath Bana Patil Parshuram Ladaku Patil Suresh Eknath Dhumal Nandkishor Natha Patil	4)Also convicted u/ss. 147 & 148 of IPC.	No separate sentence awarded.

1	Arun Narayan Dhumal	Convicted u/s.25 (1)(a) of the Indian Arms Act.	No separate sentence.

7. Feeling aggrieved by this judgment different appeals were preferred by different accused persons; Criminal Appeal No.401/2001 was filed by accused No.1-Arun Narayan Dhumal, Criminal Appeal No.417/2001 was filed by accused No.2-Ananta Joma Patil, Criminal Appeal No.305/2001 was filed by accused No.3-Hiraman Janu Zuge and Criminal Appeal No.384 of 2001 was filed by accused Nos.19, 22 and 23 who were added as accused persons in pursuance of order at Ex.103. Criminal Appeal No.385 of 2001 was filed by rest of the accused persons who were convicted for different offences as will be seen from the following chart :

Accd No.	*Name*	*Convicted u/s.*	*Sentence* 4
4	Dharma Dhaya Joshi	Convicted u/s.302 r/w 149 of IPC.	Life imprisonment and fine of Rs.100 i.e. R.I. for one month.
5	Madan Vasant Dhumal		
6	Macchindra Narayan Dhumal	U/s.307.r/w149 of IPC	R.I. For 10 years and fine of Rs.100 i.d. R.I. For one month.
9	Pralhad Sitaram Zuge		
10	Pandurang Damu Pawar	U/s.324 r/w 149 of IPC	R.I. For one year.
11	Sham Eaknath Dhumal		
12	Madan Daluram Pawar	U/s.147 & 148 of IPC.	No separate sentence.
15	Jagdish Narayan Dhumal		
16	Hausha Atmaram Pawar	U/s.25(1)(a) of Indian Arms Act.	No separate sentence.
17	Vishwanath Bana Patil		

It is pertinent to note that during the pendency of this appeal accused No.17-Vishwanath Bana Patil has expired and the appeal in so far as he is concerned therefore abates.

8. It will be seen that thus several accused persons have filed several appeals. The incident according to prosecution is one. The evidence obviously is one consisting of 12 witnesses and other voluminous documentary evidence. All these appeals challenge the correctness and decision of conviction on several grounds mentioned therein. Learned advocates appearing for different appellants made their submissions but basically the arguments were led by Shri A.P.Mundargi, Senior Counsel, appearing on behalf of some of the

accused. Firstly he argued on the legality of the orders directing framing of charges and framing of additional charges. According to him, learned trial Judge while framing additional charges acted illegally in framing of the additional charges. According to the learned counsel that power to proceed against other persons appearing to be guilty of any offence is mentioned in section 319 of the Code of Criminal Procedure. According to him this can be done where in the course of any inquiry into, or trial of an offence, it appears from the offence that any person not being the accused has committed any offence for which such person could be tried together with accused, the Court may proceed against such person for the offence which he appears to have committed. The section makes consequential provisions in view of such decision. According to the learned counsel additional charge was first framed on 7.11.2000, the trial had not began, investigation was complete and the police record till then consisted of charges against accused Nos. 1 to 18 only. There is nothing on record to indicate that something came to the knowledge of the learned trial Judge during the course of inquiry by police into commissions of offence mentioned in the FIR. There is no question of anything appearing to the learned Judge during the trial or appearing from the evidence because recording of evidence had not began at that time. According to the learned counsel therefore the framing of additional charges was illegal therefore void *ab-initio*. It will be seen that power to proceed against

other persons means any person other than those who are already charged and this power can be exercised "in the course of any inquiry into," or trial of, an offence, it appears to the Court that the persons other than those already accused have *prima facie* committed some offence which could be tried with the accused already charged, he may proceed to frame such charge. Firstly during the course of any inquiry into an offence cannot result in evidence, it will be investigation report of the police based on certain material disclosed during investigation. Assuming it to be the evidence, it must be in existence when framing of such additional charges was ordered. A perusal of the orders directing framing of additional charges shows total lack of any such additional material or evidence on the basis of which the power under section 319 can be legitimately exercised. However, the question is purely academic in relation to accused persons who have been factually acquitted by the learned trial Judge. However, accused in Criminal Appeal No.384 of 2001 are concerned they were added in pursuance of order under Ex.103 passed on 7.4.2000 whereby five persons were added and numbered as accused persons 19 to 23 and they were charged as aforesaid. Of them three have been convicted for various charges as will be seen from the chart shown above and in so far as they were concerned the question of legality of the order directing framing of charge continues to be real and substantial. However in our opinion, the decision as to the legality of the charge

additionally framed can be taken after reappreciation of the entire evidence on record and considering the involvement of the individual accused persons in the crime with which they were charged. A cohesive decision on this issue is therefore necessary.

9. That takes us to the evidence on record reappreciation of which is undertaken by us with the able assistance of the learned additional public prosecutor and the advocates appearing on behalf of different accused persons. The prosecution has examined in all 12 witnesses, three of them are eye witnesses. Their presence according to the prosecution is undoubted and their evidence substantially is enough according to the prosecution to maintain the order of conviction against all the accused-appellants. The learned advocates appearing for different parties however submitted that the evidence on these eye witnesses is so unreliable, contradictory and full of omissions that it is impossible to accept the same and consequently the conviction is unsustainable in law for all the charges leveled against the accused persons.

10. As aforesaid the prosecution has examined 12 witnesses to prove its case. Of these witnesses P.W.1-Dinkar Zuge, P.W.2-Tukaram Patil and P.W.3-Rajaram Patil are the eye witnesses, P.W.4-Sharad Patil is panch, P.W.5-Rajendra Shewale is another panch in whose presence clothes were seized but he does not state to whom the clothes belong.

P.W.6-Venketeshwaran, P.W.9-Ramesh Patel and P.W.12-Ashok Shinde are all doctors who examined the victims and some of the accused who were injured. P.W.7-Rangrao Morabale and P.w.8-Mallikarjun Kumbhar are the Police Sub Inspectors connected with the investigation and P.W.10-Jaysing Patil is the investigating officer-police inspector. Basically therefore the entire case hinges on the ocular testimony of first three witnesses who claim to be eye witnesses to the entire incident and on whom reliance is placed by the learned Judge for recording the order of conviction. P.W.1-Dinkar is the person who lodged the First Information Report. He gives history of relationship between the accused party and complainant party, speaks of auction of fishing rights in the village pond and states that on 4.6.1995 it was auctioned in favour of three persons who complained of fish dying unnaturally and claimed refund of money (Rs.65,000/-) as the auction was frustrated by unnatural death of large number of fish.

11. On 11.6.1995 according to him a village meeting was called where the entire village was supposed to be present to resolve this dispute. He claims that he came back from Panvel to village around 3.15 p.m. on that day. He then proceeds to narrate whole incident. According to him the dispute regarding return of auction money to the purchasers was resolved amicably and peacefully and the quarrel started thereafter between accused party and complainant party. He submits that he went to Panvel to bring one Kamlakant Thakur who

was to be the main mediator in this dispute. However he could not meet said Kamlakant as he was not available and he waited for him for sometime and returned to his house at 3.15 p.m. By then the village meeting had commenced in the hall of Ganesh temple and therefore he proceeded to reach the hall. At around 3.30 p.m. Proceedings of the meeting were started by Jayendra Patil. At 3.45 p.m. Kamlakant Thakur had reached meeting hall. He stated that all the questions can be resolved amicably. He then says that accused No.2 stood up and started raising dispute. He has named some of the accused who also started raising the dispute. He names the persons who were beaten up. According to the witness Kamlakant Thakur then tried to pacify the persons but nobody listened to him. The witness then says that he came out of the hall and from near the house of one Janya Zuge, Arun Dhumal came with the gun in his hand. According to the witness there was pistol in the hands of Ananta and Dharma Joshi was having battle axe in his hands, Pralhad Zuge was having sword, Eknath Dhumal and Madan Daduram were having explosives in their hands, Pandurang Pawar was having sword, Hiramaj Zuge was having battle axe Vishwanath Patil was having battle axe, Madan Dhumal was having sword and he pointed out to the accused persons in the Court. He then says that there is a well in front of the temple. Dharma Patil was running from the well and Arun Dhumal fired gun on him. But he was not hit. When Dharma Patil was running his brother Rajaram also

started running. He then says that two other persons were also running behind him and he also started running towards direction of his house. The witness is very emphatic in saying that he started running towards his house. According to him Dharma Joshi, Pandurang Pawar and Madan Pawar started chasing the witness and therefore he did not go to his house but ran towards the directions of Chinchapada. Then he hired a rickshaw and went to police station, Panvel around 5.15 p.m. and lodged his complaint. Police came back to the village with the witness and noticed the victim Dharma Patil lying dead, his clothes were stained with blood, Rajaram Patil was another victim lying thereabout whose clothes were also stained with blood. Accused No.15Jagdish Dhumal was also lying there with blood stained clothes. Police lifted and took them to the hospital for treatment. According to the witness though he narrated everything to the police when he first went there by 5.00/5.15 p.m. the First Information Report was recorded only at 7.00 p.m. in the court yard at the instance of the complainant. Thereafter his statement was recorded on the next day by the police in the Panvel police station. The witness has been extensively cross examined and during the cross examination the witness has resiled from almost all the statements made by him in the examination in chief. He has contradicted himself on every material point. He has failed to mention names of accused Nos.19 to 36. He does not attribute any action to many of the accused and attributes no

action to accused Nos. 19 to 36. His claim in the examination in chief that it was he who showed the spot to the police is proved false as there is no reference in the panchnama in relation to the witness showing it. In the cross examination he specifically admits that the dispute relating to auction money was amicably settled in the meeting held in the hall. He admits the enmity between the parties. According to this witness therefore the incident started in the hall. Some persons of the complainant party were running out of the hall and they were chased and stopped and injured by some other persons. The witness admits that he was running away from the hall and the victim and the witness were chased by the accused. There is no explanation as to how he could see every action of every person following him. His cross examination regarding gun with the accused persons is very revealing. He admits that he does not know what a gun is. According to him he had not seen a gun. He cannot tell the difference between country made gun and factory made gun. Then he further categorically admits that there was no reason for any quarrel. His statements needs to be noted verbatim :

> "Nobody has raised objection in respect of proposal of refund of amount of the auction price to Ram Laxman Patil. It is correct that there was no reason for quarrel in the meeting."

Then he says that panchnama in respect of seizure of pallets was recorded in the court yard of Dnyaneshwar Patil. This is factually

incorrect. No such panchnama was recorded and it is admitted by Special Prosecutor. The witness has thus deliberately made false statement regarding seizure of pallets. In para 37 of his cross examination he admits the enmity which existed between the accused party and the complainant party. He admits earlier that he thought that all members of the accused party should be prosecuted. He agrees that he did not mention their names in police station. In the first instance mentioned names of few in the FIR but he always desired that all the accused party be prosecuted and then as noted above in para 37 he gives yet another reason why such enmity existed between the parties. He also admits that he had not seen how Dharma died and he had not seen the gun by which Dharma died. But yet he tells the police that Dharma was killed by the accused. In his examination in chief he says that one or two accused were carrying explosives. He admits in cross examination that there was no occasion for him to handle explosives and therefore he had no knowledge of explosives. Having made all such contradictory statements the witness then says that it is not correct that while running he did not turn to the backside that means he turned to the backside. On how many occasions he turned is not known. Yet giving of any description of the occurrences behind his back requires some attention. His attention was reverted on running away. His cursorily looking backward cannot be taken as truthful statement of factually witnessing of the entire incidence.

12. We have to keep in mind on appreciating the evidence of this witness that he is totally partial witness and is out to involve as many accused as he could. Filing of applications by the complainant for additional charges being framed for additional persons as accused proves this fact. Apart from that the number of omissions are committed by the witness during the course of his statement in the Court which runs to about 50 pages. The witness has totally exposed himself as untrustworthy, unreliable and partisan witness.

13. That takes us to evidence of P.W.2-Tukaram Patil who claims to be second eye witness. According to this witness Arun Dhumal was not present in the hall. According to him he was assaulted in the hall and therefore he ran away. According to this witness decision to refund the money was unanimous and there was no reason for quarrel and yet both the witnesses insist that the quarrel was started by accused party. According to this witness Kamlakant Thakur came to the hall after 4.30 p.m. The time lack between the two witnesses is of full one hour. He then proceeds to name accused who according to him were present in the hall. He specifically avers that Kamlakant Thakur had settled the dispute amicably. According to this witness Ananta Patil then stood up and started addressing the meeting. He instigated the persons therefore persons named by him started slapping the witness and giving fist blows and therefore he came out of the hall. According to him there was confusion in the hall. He then claims that Arun Dhumal

had gun in his hand, Shyam had explosives, Jagadish Dhumal and Housha Atmaram were having swords and they were chasing the witness who had started running. The witness goes to the extent of saying that he had seen the explosives in the burning condition in the hand of Shyam. Shyam Dhumal was having a bag of explosives and others were pelting stones. If the explosives were in the bag it is impossible for him to see the explosives with Shyam Dhumal. There is no claim that the bag carried containing explosives was of plastic or was transparent and therefore he could see through. He reiterates atleast on three occasions in his examination in chief that the meeting was peacefully conducted and ended and that there was no reason for quarrel. In para 12 this witness claims that he heard three shots. But is unable to tell the gap between the shots. He admits that no bullets or empty cartridges were found at the spot. His cross examination is equally searching and equally fruitful. He has completely somersaulted in his cross examination and has contradicted every statement that he made in his examination in chief. His reply in cross examination to certain questions in para 24 is noteworthy. He says after admitting that they made efforts to aid five accused as under :

> "24. I know pistol. My statement was recorded by police. Pistol is deadly weapon. It is correct if pistol is seen in hand of any person, it is not the matter which can be forgotten. It is also correct that I would have seen gun in the hand of any person at

the time of incident, I would not forget that fact."

He then admits that he had no occasion to see explosives and yet claims that he saw explosives with Shyam in his bag which was not transparent. Then he says that when the meeting was going on he did not see any objectionable things. He then categorically states that in the temple nobody had taken out weapon and proves to be wrong. This witness is proved wrong by P.W.3 who says that the entire incident of firing took place in two minutes and according to him this witness had witnessed for 15 minutes. He then admits that he does not understand the difference between noise of explosive and fire arm. The evidence of P.W.2 also is therefore full of contradictions and can be accepted only with corroboration. No corroboration is available to this witness from evidence of P.W.1. No corroboration is available to the evidence of P.W.1 from the statement of this witness. That takes us to consider the evidence of P.W.3 who is the third eye witness. The third witness is Rajaram Patil. His testimony is of 21 pages. According to him he was an eye witness to the whole incident. The entire incident took place in the hall itself. If the testimony of this witness is to be accepted the evidence given by P.Ws. 1 and 2 will have to be rejected as false and fabricated as they claim that everything in the assault took place outside the hall and that the meeting was concluded amicably and peacefully. Taking into consideration basic contradictions in the evidence of these three witnesses it is obvious

that the prosecution has failed to prove the exact spot where the incident occurred. A scrutiny of evidence of these witnesses further discloses that the scene of offence was somewhere else. He contradicts every material statement made by P.Ws. 1 and 2 and it would thus be seen that there is no corroboration whatsoever to the statement made by all these three so called eye witnesses.

13. There is no recovery of bullets on the spot. It is impossible that three gun shots were fired, one resulted in death of the victim and yet no pallets were found no seizure of the articles was made and yet we are asked to believe that the accused were the persons who assaulted and killed the victim. Yet another aspect which has to be noted is the fact that the gun is alleged to have been used in the offence which itself is not available on record. Whatever was available was shown to the witnesses and it is admitted position from the evidence of P.W.10-Jaysingh Patil the investigating officer that the available material did not have the capacity of being fired as there was no trigger present in the machinery. In the absence of any evidence, existence of gun with anybody, in the absence of any evidence of pallets or cartridges being recovered it is difficult to believe the claim made by the prosecution that the accused persons are responsible for the assault.

14. It will be seen that the learned trial Judge has on this very set of evidence chosen to acquit accused Nos.24 to 36 and has convicted only three accused from accused Nos.18 to 23. The reason for not

convicting any of these persons is correct and valid. According to the learned Judge these persons and their roles were not mentioned before the police initially, they were added as an improvement. Additional charge sheets were filed, additional charges were framed which speaks of definite intention on the part of the complainant to frame as many persons of the accused party as possible. If there is cogent evidence on record to show definite planning on the part of the complainant to frame the accused persons and absence of such evidence resulting in acquittal of several persons makes sustaining of conviction of the appellants illegal and unsustainable in law. The whole evidence is liable to be rejected as the ocular testimony is full of contradictions, omissions and improvements. There is no evidence of existence of gun, there is no evidence of existence of pallets or cartridges, there is no evidence to show that gun shot or pallets were empty though the firing has taken place in front of a tree. In such state of affairs we feel grossly unsafe to sustain the order of conviction as recorded by the learned trial Judge. The prosecution has failed to prove even the exact spot where the incident took place, the prosecution has failed to prove that what was the weapon of assault used for causing injury and the prosecution has further failed to prove to bring on record the instrument with which it was caused. In such circumstances the order of the learned trial Judge convicting the persons is unacceptable, incorrect and illegal and therefore deserves

to be set aside. That takes us to the question of action under section 319 of the Criminal Procedure Code. We are presently of the opinion that in such circumstances when we have acquitted the accused on reappreciation of the evidence on record we need not in this case go into the question of illegality committed by the trial Judge in framing charges taking recourse to section 319. In our opinion, the appeals must succeed and appellants deserve to be acquitted. Each appellant is held not guilty of any of the offences with which they were charged. Some of them are on bail. Their bail bonds stands cancelled. Those who are in jail are liable to be set at liberty forthwith if not otherwise require. Appeals stand allowed accordingly.